

**NOTICE OF PROPOSED ACTION
AMENDMENT OF EMERGENCY REGULATIONS**

**California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation
Corrections Standards Authority**

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Sections 15820.906 and 15820.916 and the rulemaking authority granted by Penal Code Section 5058.3, in order to implement, interpret and make specific Government Code Sections 15820.90 through 15820.917, proposes to adopt Sections 1747.1, 1749.1 and 1750.1 and amend Sections 1706, 1747-1750, 1752, 1756, 1757 and 1767 of Title 15, California Code of Regulations, Division 1, Chapter 1, Subchapter 6, concerning local jail construction funding.

SCHEDULED PUBLIC HEARING DATE:

Date and Time: January 26, 2011 @1:00 p.m.
Place: 660 Bercut Drive, Sacramento, 95811
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period **will begin on December 3, 2010 and will close on January 20, 2011 at 5:00 p.m.** The text with proposed amendments, Initial Statement of Reasons and the Notice of Proposed Action will be made available on the CSA's website at www.cdcr.ca.gov/CSA/CFC/SB81_program.html . To be considered by the CSA, comments regarding the proposed changes must be submitted to the CSA, County Facilities Construction Division, 600 Bercut Drive, Sacramento, CA 95811; by fax at (916) 327-3317; or by e-mail at adultfacilityconstruction@cdcr.ca.gov before the close of the comment period.

CONTACT PERSONS:

Please direct any inquiries regarding this action to:

Charlene Aboytes, Field Representative
Corrections Standards Authority
Dept. of Corrections and Rehabilitation
600 Bercut Drive, Sacramento, CA 95811
Voice: (916) 445-5073
E-Mail: Charlene.aboytes@cdcr.ca.gov

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Sections 17500-17630.

FISCAL IMPACT STATEMENT:

- Cost or savings to any state agency

There will be a cost to the state through debt service paid on the lease revenue bonds, but the CSA does not anticipate any debt services payments within the next two years.

- Other nondiscretionary cost or savings imposed on local agencies:

None. To be eligible for this voluntary funding program, counties must provide matching funds of 25% of total project costs. This will vary depending on the total funds counties request.

- Cost or savings in federal funding to the state:

None

EFFECT ON HOUSING COSTS:

The CSA has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The CSA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The CSA has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The CSA has determined that the proposed regulations will indirectly positively affect small businesses. Among other provisions, the Public Safety and Offender Rehabilitation Services Act of 2007 provides \$1.2 billion (in two phases) to counties for the construction or expansion of local jails. This will mean more construction and custody related jobs in the communities where this construction takes place.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:

The CSA has determined that the proposed regulations will indirectly positively affect jobs in California. Among other provisions, the Public Safety and Offender Rehabilitation Services Act of 2007 provides \$1.2 billion (in two phases) to

counties for the construction or expansion of local jails. This will mean more construction related jobs in the communities where this construction takes place.

CONSIDERATION OF ALTERNATIVES:

The CSA must determine that no reasonable alternative considered by the CSA, or that has otherwise been identified and brought to the attention of the CSA, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The CSA has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the amended regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR and the Notice of Proposed Action will also be made available on the CSA's website at www.cdcr.ca.gov/CSA/CFC/SB81_program.html.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the CSA's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the CSA may adopt the proposed modified regulations substantially as described in this Notice. If the CSA makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the CSA adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The CSA will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Summary of Existing Laws:

In May 2007, Governor Arnold Schwarzenegger signed into law Assembly Bill 900, the Public Safety and Offender Rehabilitation Services Act of 2007. Those requirements are now reflected in Chapter 7, Statutes of 2007 and in new sections of the Government Code. These sections (15820.906 and 15820.916) outline the CSA's responsibilities to administer local jail construction funding. Specifically, Sections 15820.906 and 15820.916 require the CSA to adopt regulations for the approval or disapproval of local jail facilities.

Summary of Existing Regulations:

On November 28, 2008 the 2007 Local Jail Construction Funding Program Title 15 regulations were effective. These regulations describe the CSA's responsibilities pertaining to the administration local jail construction funding through lease-revenue bond financing. (Previously, the Board of Corrections¹ administered the County Jail Capital Expenditure Bond Acts of 1981 and 1984, the County Correctional Facility Capital Expenditure Bond Act of 1986 and the County Correctional Facility Capital Expenditure and Youth Facility Bond Act of 1988. Regulations in effect at that time were located in Title 15, California Code of Regulations, Division 1, Chapter 1, Subchapter 2.) There are no comparable federal regulations or statutes.

ARTICLE 1, GENERAL PROVISIONS**Section 1706, Definitions.**

The definition for "concept drawings" is being added to describe the drawings or architectural renderings that, along with performance criteria, participating counties will develop to describe their design-build projects.

The definition for "design-bid-build" is being added to describe the building process generally used to construct a facility. It is the building process where the project is designed by an architectural firm that produces 100 percent complete construction documents, the project is put out to bid, and a bid is awarded to a construction firm that builds the project.

The definition for "design-build" is being added to describe the building process where the project is designed and built by the same contracted entity. For these regulations there are some distinct requirements for the "design-build" process that differs from the "design-bid-build process." Therefore, new regulations were added to describe the design-build requirements.

The definition for "ground lease" is being amended to add "Board-financed" before "local jail facility" to make it clear that the property upon which the jail project will be constructed will be financed through the State Public Works Board. In addition, the term (the "site") was deleted from this regulation because it was determined to be redundant.

The definition for "performance criteria" is being added to describe the information prepared pursuant to Public Contract Code 20133 that is provided by a participating county that fully describes the scope of the proposed design-build project.

In the definition for "Rated capacity," the Title 24 citation was amended.

¹ As a result of the reorganization of California's correctional system in 2005, the Board of Corrections was renamed the Corrections Standards Authority.

The definition for "site" is being amended to add "Board-financed" before "local jail facility" to make it clear that the property upon which the jail project will be constructed will be financed through the State Public Works Board.

In the definition for "Special use beds," the Title 24 citation was amended.

ARTICLE 3, APPLICATION TO PARTICIPATE IN 2007 LOCAL JAIL CONSTRUCTION FUNDING PROGRAM

Section 1747, Pre-funding Requirements.

Assembly Bill 1628 added language to Government Code Sections 15820.906 and 15820.916 to allow the use of the design-build construction process with AB 900 lease-revenue bond financing. As a result of this change, it became necessary in some cases to amend existing regulations and create new regulations to describe the different requirements for the design-bid-build and the design-build processes. Because this regulation is specific to the design-bid-build process it was necessary to change the title to "Steps to Proceed with Construction for Design-Bid-Build Projects." Subsection (a)(3) was deleted because the review and approving of the specified documents, the summary of bids received, a statement explaining to which contractor the bid was awarded and why, and the copy of the notice to proceed issued to the contractor, is the sole responsibility of the State Public Works Board.

In subsection (a)(2) the Title 24 citation was amended.

Subsection (a)(9) was deleted. The requirement that the county certify to CDCR and the Authority that the Board has determined an action was deemed unnecessary. The Board determination in this subsection is subsumed in the other actions the Board takes with regard to the project.

Section 1747.1, Steps to Proceed with Construction for Design-Build Projects.

This new regulation is being added to describe the steps to proceed with construction and the unique requirements for design-build projects.

Section 1748, Requirements for the Project Delivery and Construction Agreement.

Subsection (c) is being amended to add the term "design-build" in front of "contractors." This was done to make it clear that both the construction contractor and the design-build contractor must post payment and performance bonds.

Section 1749, Submittal of Architectural Drawings and Specifications.

This regulation requires that the Authority approve the construction document plans and specifications before state monies can be encumbered in contracts by participating counties. This is the traditional design-bid-build construction project delivery system where the county completes the design of the project, the Authority reviews the construction document drawings (architectural plans and specifications that are 100% complete) and approves the project. The county then bids the project and then begins construction of the project and submits invoices in arrears for payment. Because this regulation is specific to the submittal of

drawings and specifications for design-bid-build process it was necessary to change the title to "Submittal of Architectural Drawings and Specifications for Design-Bid-Build Projects."

Reference to the submittal of the Operational Program Statement in subsection (a) was deleted here but added to Section 1750 to include all of the previously required pre-construction submittals into one regulation.

In subsection (d) the Title 24 citation was amended.

Section 1749.1, Submittal of Performance Criteria and Architectural Drawings and Specifications for Design-Build Projects.

Assembly Bill 1628 added language to Government Code Sections 15820.906 and 15820.916 indicating that no state monies shall be encumbered in contracts let by a participating county until either final architectural plans and specifications have been approved by the CSA, and subsequent construction bids have been received (this process is addressed in Section 1749), or documents prepared by a participating county pursuant to paragraph (1) of subdivision (d) of Section 20133 of the Public Contract Code have been approved by the CSA, and a design-build contract has been awarded pursuant to that section. This new regulation addresses the design-build process. This new regulation outlines the requirements for counties to submit documents in accordance with Public Contract Code Section 20133. Once the Authority has approved the documents and a design-build contract has been awarded pursuant to that section, the participating county can begin construction of the project and submit invoices in arrears for payment.

Section 1750, Staffing Plan/Operating Cost Analysis.

The title of this regulation has been changed to "Operational Program Statement/Staffing Plan/Operating Cost Analysis for Design-Bid-Build Projects." This regulation is now specific to design-bid-build projects and subsection (a) has been added to include the requirement to submit an Operational Program Statement. Previously a requirement in Section 1749, it was added here to include all of the previously required pre-construction submittals into one regulation.

Section 1750.1, Operational Program Statement/Staffing Plan/Operating Cost Analysis for Design-Build Projects.

Government Code Sections 15820.906 and 15820.916 requires counties to staff and operate local jails built through the 2007 Local Jail Construction Funding Program. This new regulation is specific to design-build projects and requires that counties that utilize this construction method develop a plan that describes how the new facility will be operated (the Operational Program Statement), staffed (the Staffing Plan) and how its operation will be funded (the Operating Cost Analysis). The purpose of these documents is to encourage counties to study and analyze their facility design and its impacts on on-going costs.

The terms "post identification" and "transition team program statement" as utilized in this section are not defined as these are terms of art that have a standard use and understanding in the corrections industry. The county will also be required to

submit an analysis of a thirty (30) year lifecycle operating costs and maintenance and energy costs for the proposed facility. This is to ensure that the county has considered costs beyond the construction costs, and has acknowledged the on-going operating costs of a jail facility over the typical thirty (30) year lifecycle of such facilities.

Section 1752, Ground Lease.

This regulation has been amended to delete reference to the ground lease being in a form agreed to by the Office of the Attorney General, the Board and the Authority. This reference was determined to be unnecessary because the development of all the agreements for this construction program was a collaborative effort between all the effected State agencies and the State Public Works Board relies on the legal review from the Department of Finance.

ARTICLE 4, ADMINISTRATION OF THE PROCEEDS OF THE STATE BOND FUNDS AND PROJECT MONITORING

Section 1756, Disbursement of the Proceeds from the Lease-Revenue Bond Funds.

Subsection (a) has been amended to apply to both the design-bid-build process and the design-build process. This amendment will require counties utilizing the design-build process to submit performance criteria or performance criteria and concept drawings for approval by the CSA pursuant to Section 1749.1. Upon approval of those documents by the Authority, and with the award of a design-build contract pursuant to Section 1749.1, the participating county can begin construction of the project and submit invoices in arrears for payment.

Section 1757, Pooled Money Investment Board.

Subsection (b) has been amended to clarify that this regulation applies to design-bid-build and design-build projects. Also, statutory references were corrected.

Section 1767, Completion of Project.

This regulation is being amended to clarify that it applies to both design-bid-build projects and design-build projects.